

Chapter 1.0 – Introduction

Chapter 1.0 provides background information on the proposed project, including the Artists' vision and objectives for the project, the Bureau of Land Management's (BLM) purpose and need for the action, and a summary of issues and concerns to be analyzed in the subsequent EIS chapters.

1.1 OVERVIEW

The Artists, Christo and Jeanne-Claude, propose to install a temporary work of art consisting of fabric panels suspended horizontally over approximately 5.9 miles of a 42.4-mile stretch of the Arkansas River between Cañon City and Salida, Colorado. The work of art, known as *Over The River™* (OTR), would require the use of federal, private, and state lands adjacent to the river. The BLM Royal Gorge Field Office (RGFO) administers the federal lands within the proposed Project Area.

Over The River Corporation (OTR Corp or applicant) has applied for a land use authorization with the BLM RGFO for a three-year period to install, exhibit, and remove the work of art on public lands in western Fremont County and the southeast portion of Chaffee County, Colorado. The BLM RGFO is the lead federal agency and has the final authority of determining whether, and under what terms and conditions, a BLM land use permit would be issued to the project applicant for *Over The River™*.

The BLM RGFO has determined that an Environmental Impact Statement (EIS) is required under the National Environmental Policy Act of 1969 (NEPA; 42 United States Code [U.S.C.] 4321 et seq.; Public Law [PL] 91-190) to analyze the Artists' proposal, define a range of reasonable alternatives, and disclose the project's potential environmental impacts. Through this process, the BLM RGFO intends to avoid, minimize, rectify, reduce, eliminate, or compensate for potential environmental impacts to the extent possible as required by NEPA (40 CFR 1508.20). This EIS has been prepared consistent with the requirements of the Council on Environmental Quality (CEQ) regulations on implementing NEPA (40 CFR 1500-1508) to enable informed decision-making.

1.2 PROJECT LOCATION

The project is proposed in the Arkansas River corridor between Salida and Cañon City, Colorado, a distance of approximately 42.0 miles (Maps 1-1, 1-2, and 1-3). The Project Area is located approximately 50.0 air-miles southwest of Colorado Springs and 100.0 air-miles southwest of Denver.

The Arkansas River is situated in a canyon setting surrounded by hilly, steep terrain. U.S. Highway 50 (US 50) and the Union Pacific Railroad (UPRR) parallel the river through the entire Project Area. Access to and through the Project Area is limited to US 50, which is the primary access to all recreation sites and residential areas within the Arkansas River corridor and serves as a major thoroughfare for east-west travel in central Colorado. Between Cañon City and Salida, Colorado, State Highway (SH) 9 east of Parkdale and Colorado SH 69 at Texas Creek provide access to and from US 50 in the Project Area. Although Cañon City and Salida are the nearest incorporated population centers, several smaller residential communities are located along or are adjacent to the river corridor, including Wellsville, Swissvale, Howard, Coaldale, Cotopaxi, Texas Creek, and Parkdale.

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Map 1-1 (Placeholder)

Back of Map 1-1 (Placeholder)

Map 1-2 (Placeholder)

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Map 1-3 (Placeholder)

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The footprint of the proposed project would encompass approximately 310 acres. The majority of the Project Area is located in Fremont County; however, a small portion at the western end of the project is also located in Chaffee County. Although the great majority of the proposed project would be located on BLM-administered lands, some project elements would be on lands owned by the Colorado State Land Board (SLB), private lands, and lands cooperatively managed by Colorado State Parks (State Parks) in the Arkansas Headwaters Recreation Area (AHRA) (Map 1-2).

Approximately 80% of the area encompassed by the proposed project would be located in the Arkansas Canyonlands Area of Critical Environmental Concern (ACEC), a BLM-specific designation that recognizes areas where special management attention is needed to protect and prevent irreparable damage to outstandingly remarkable values. The Arkansas Canyonlands ACEC contains scenic, historic, and cultural values; and key habitat for raptor, bighorn sheep, and fisheries. The panel sites on the eastern end of the project (the area nearest to Cañon City) would occur within parts of the ACEC, including the Spike Buck, Three Rocks, Maytag, and Texas Creek panel sites as well as the majority (but not all) of the Parkdale panel site (Map 1-2).

The AHRA is a nationally significant multiple-use resource that provides a variety of recreational opportunities and serves as a regional hub for outdoor recreational pursuits.

The Arkansas River corridor has retained its natural characteristics even though it has been modified by a railroad, a busy highway, and substantial agricultural, residential, and commercial development along much of its length. The Arkansas River has a significant and vital impact on the valley's economy and beyond because of water rights for irrigation, municipal and industrial purposes, and for the sale and storage of water. Because of its natural beauty, biological productivity, steep gradient and diversity of river environments, the Arkansas River is very popular with recreationists.

The proposed Project Area would also encompass portions of the Arkansas River Special Recreation Management Area (SRMA) and is located adjacent to the McIntyre Hills Wilderness Study Area (WSA). A thorough description of these and other resources in the Project Area is provided in Chapter 3.0.

1.3 PROJECT BACKGROUND

The following sections summarize the history of the project, a brief summary of the Artists' proposed project, and the Artists' vision and objectives for the project.

1.3.1 Project History

The applicant initially presented a verbal proposal of the project to the BLM RGFO in 1996. The applicant subsequently retained a contractor to initiate preparation of an Environmental Assessment (EA), including initial public scoping efforts, in 1997 through 2000. The project was put on hold by the applicant in 2002. The applicant re-approached the BLM RGFO about the proposed project in August 2005. Additional EA-level scoping occurred January-February 2006. In April 2006, the BLM advised the applicant that an EIS would be required in order to proceed with the proposal due to the project complexity, controversial nature of the proposal, concerns regarding public safety, and the potential for significant impacts. Subsequently, a Notice of Intent (NOI) to prepare an EIS was published in the *Federal Register* on June 19, 2006.

In June 2006, the BLM RGFO requested a detailed design proposal from the applicant, including additional details on project design, scheduling, and event management. In April 2007, OTR Corp delivered a detailed *Design and Planning Report* that included a preliminary set of alternatives; however, the 2007 report did not include some of the details previously requested by the BLM that were necessary to move forward with the EIS. In April 2008, the BLM received a *Detailed Design Proposal*, including additional project information with the level of detail necessary to move forward with the EIS. Subsequently, a Notice of Realty Action (NORA) was published in the *Federal Register* on October 31, 2008.

1.3.2 Applicant's Proposed Project

As proposed by the applicant, *Over The River™* would consist of approximately 5.9 miles of fabric panels suspended above the Arkansas River in eight areas within a 42-mile stretch of river between Salida and Cañon City (Map 1-2). The fabric panels would be supported above the river by a system of cables and anchors. The exhibit is proposed for a 2-week display and viewing period. The proposed art exhibit is a no-fee visitor event and includes no viewing charge. At the end of the 2-week exhibition period, the system of cables and anchors and other above-ground materials would be removed and recycled. The applicant would be responsible for restoring the river corridor to BLM standards per the terms and conditions defined in a land use authorization.

The installation, exhibition, and removal phases are projected to attract 416,000 visitors over an approximately three-year period, including 344,000 visitors during the 2-week exhibition proposed for the first half of August.

1.3.3 Artists' Vision and Objectives

This section presents the Artists' vision and objectives for *Over The River™* and does not necessarily represent the views or objectives of the BLM RGFO.

According to the *Design and Planning Report* (J.F. Sato 2007) and the Sponsor's (Artists') *Statement of Goals, Objectives and Artistic Vision for Over The River* (OTR 2008a), the Artists' core vision for *Over The River™* involves the temporary horizontal suspension of luminous fabric in a summertime river environment that offers a range of lighting conditions and a variety of landscapes so as to create contrasting lines, forms, colors, and textures (Figures 1-1 and 1-2). With the natural beauty of the river as part of the temporary work of art, the Artists envisioned that the translucent fabric panels would emphasize the configuration of the river as it meanders, winds, and bends. The creation of a temporary work of art for the free enjoyment of the viewing public is integral to the Artists' vision for *Over The River™*.

In August 1992, 1993, and 1994, the Artists and their project team traveled throughout the western United States and evaluated 89 rivers in search of the ideal setting for the *Over The River™* installment. Ultimately, the Arkansas River between Cañon City and Salida was selected as the site for the temporary installment because of its unique combination of steep banks, road and rail access, visibility from the road, proximity to major metropolitan areas, opportunity for on-water viewing, site aesthetics, and alternating white water and flat water areas.

The Artists believe that people should have the opportunity to experience art outside the confined walls of museums. The Artists "borrow public space and temporarily intervene in the daily rhythm of the local population, in order to create a gentle disturbance intended to refocus the routine view of usual

surroundings” (J.F. Sato 2007). The Artists consider the opportunity for the public to gain new perspectives on aspects of the Arkansas River corridor to be a key component of *Over The River™* (J.F. Sato 2007).



Figure 1-1. View of live test (from river perspective) on private lands in western Colorado, 1999

Photo Credit: OTR Corp



Figure 1-2. Aerial view of live test on private lands in western Colorado, 1999

Photo Credit: OTR Corp

1.4 KEY PROJECT PARTICIPANTS

By their nature, rivers often flow through lands with multiple ownerships and jurisdictions. While the management of most segments of the river corridor within the Project Area would be primarily the responsibility of the BLM, a number of other government and private entities are involved in administering lands in the Project Area. Therefore, it is important for these entities to be involved in the planning for public lands within the Project Area. The BLM has consulted with a number of other federal and state agencies, tribes, and local governments in the preparation of this EIS. The mission and responsibility of key project participants is discussed in the following sections.

1.4.1 Bureau of Land Management

It is the mission of the BLM to sustain the health, diversity, and productivity of the public lands for the use and enjoyment of present and future generations. The BLM RGFO is the lead federal agency responsible for preparation of this EIS and project oversight and compliance with the requirements of NEPA and other applicable laws and regulations. The BLM RGFO Field Manager is the federal official responsible for the decision on whether to issue the requested BLM land use permit and, if issued, the applicable terms, conditions, or other stipulations. In the decision process, the BLM RGFO must consider how the BLM's resource management goals, objectives, opportunities, and/or conflicts relate to this non-federal use of public lands. Sections 1.5 and 1.6 provide more discussion on the BLM RGFO's consideration of current Resource Management Plan (RMP) guidelines, including plan conformance and potential conflicts.

1.4.2 Cooperating Agencies

A number of other federal, state, and local government entities have jurisdiction over resources or uses in the Project Area and/or manage lands adjacent to the river within the Project Area. The BLM has entered into cooperative agreements with the following entities to better understand and address their concerns for the EIS.

- Colorado Department of Natural Resources (CDNR), which consists of the Colorado Division of Wildlife (CDOW), State Parks, and SLB
- Colorado Department of Transportation (CDOT)
- Colorado State Patrol (CSP)
- Chaffee County
- Fremont County

Although this EIS is a BLM process and document, the BLM understands there are key considerations that the five Cooperating Agencies must have evaluated in order for each agency to make their own informed decisions on the applicants' proposal. This EIS has been developed to encompass and assess the ideas, issues, and opportunities identified by each of the Cooperating Agencies. There are a multitude of issues and concerns associated with the applicants' proposal. As such, the alternatives development and impact assessment (Chapters 2.0 and 4.0, respectively) are focused on those issues and concerns that would truly help the BLM and Cooperating Agencies to differentiate between alternatives and/or are critical to the decision-making process. The remaining issues and concerns would be addressed administratively through the terms, conditions, or other stipulations of each permitting entity's approval process, should the proposal be allowed to move forward.

A summary of each Cooperating Agency's mission and general policy guidance, critical interests, and concerns with respect to the proposed project, and project review and/or permitting responsibilities is provided below.

The Colorado DNR was created with a mission to develop, preserve, and enhance the state's natural resources for the benefit and enjoyment of current and future citizens and visitors. The CDNR is the official Cooperating Agency for preparation of the EIS; however, there are three divisions that are responsible for resources affected by the proposed project: State Parks, SLB, and CDOW.

State Parks' mission is to be leaders in providing outdoor recreation through the stewardship of Colorado's natural resources for the enjoyment, education, and inspiration of present and future generations. State Parks jointly administers the AHRA with the BLM under a Cooperative Management Agreement (CMA). In general, as part of the CMA, State Parks agrees to provide the on-ground presence and "lead" agency responsibility in managing recreational activities on the lands and waters within the AHRA.

SLB's mission is protecting and enhancing permanent endowment assets for the reasonable, consistent, and ongoing benefit of Colorado public schools and public facilities. SLB lands would be directly affected within the Project Area, specifically Section 16, Township 18 South, Range 72 West. SLB's review of the proposed project will consider the net benefits to the school trust resulting from the proposed use, and whether the value of the SLB lands held in trust are not significantly diminished.

CDOW manages wildlife throughout the State of Colorado. The mission of CDOW is to “perpetuate the wildlife resources of the state and provide people the opportunity to enjoy them.” CDOW’s role is primarily advisory, focusing on ensuring that project effects on wildlife and public recreational uses, such as fishing and hunting, are fully considered and mitigated.

CDOT’s mission is “to provide the best multi-modal transportation system for Colorado that most effectively moves people, goods, and information.” With respect to the proposed project, CDOT is focused on avoiding and minimizing scheduling conflicts, maintaining traffic flow on US 50 and other roadways, and minimizing public and vehicular safety issues.

CSP’s statutory charge is to facilitate the safe and efficient movement of all motor vehicle traffic, and to respond to motorists in need of assistance on Colorado roadways. CSP’s foremost priority is the prevention of fatal, injury, and property damage crashes.

The Fremont County Department of Planning and Zoning is a service, information, and enforcement-oriented entity, primarily dealing with land use issues in the unincorporated areas of Fremont County. The majority of the project would be located in Fremont County. Fremont County’s priorities are to ensure that emergency services are adequate to meet all potential incidents and to minimize potential impacts of the proposed project on residents and businesses.

The Chaffee County Planning and Zoning Department works to assist landowners in using their property, and to enforce the adopted Land Use Regulations to protect surrounding property owners from incompatible land uses. Project effects on local residents and public safety are key issues for Chaffee County.

1.4.3 Applicant

The Artists and OTR Corp have submitted an application for a land use authorization to the BLM RGFO in accordance with 43 CFR 2920. Unless otherwise indicated, the Artists and OTR Corp will hereinafter be collectively referred to as the “applicant”.

1.4.4 Third-Party Contractor

The BLM RGFO has retained EDAW/AECOM as a third-party consultant to assist with preparation of this EIS. EDAW/AECOM was selected by the lead agency in cooperation with the Cooperating Agencies to avoid any conflict of interest. EDAW/AECOM has certified that it does not have any financial or other interest in the decisions to be made pursuant to this EIS.

1.5 PURPOSE AND NEED FOR ACTION

The purpose and need statement for an externally generated proposal, such as Over The River™, must describe the BLM’s purpose and need for action, not the applicant’s purpose and need for the project (NEPA Manual H-1790-1, p.35, 3rd paragraph). The purpose and need statement as a whole describes the problem or opportunity to which the BLM is responding and what the BLM hopes to accomplish by the action (NEPA Manual H-1790-1, p.35, 3rd paragraph). The purpose and need statement dictates the range of alternatives, because action alternatives are not “reasonable” if they do not respond to the purpose and need for the action (NEPA Manual H-1790-1, p.36, 2nd paragraph).

1.5.1 Need for Action

For many types of actions, the “need” for the action can be described as the underlying problem or opportunity to which the BLM is responding with the action (NEPA Manual H-1790-1, p.35, 2nd paragraph).

The BLM needs to determine if the work of art can be accommodated on public land while maintaining resource objectives as described in the 1996 RGFO RMP, including the provisions of the Arkansas Canyonlands ACEC, and to make an informed decision on whether or not to issue the land use authorization.

The applicant has submitted a written proposal for a land use authorization to construct and display a work of art titled *Over The River™*, pursuant to Section 302 of the Federal Land Policy and Management Act (FLPMA), using noncompetitive permit procedures as provided in regulations at 43 CFR 2920. The BLM action on this land use proposal would be the issuance of a land use authorization for the proposed non-federal use of public lands. The BLM is responding to OTR’s application in accordance with NEPA, analyzing and disclosing the environmental impacts of issuing the requested land use authorization. Through this NEPA process, the BLM will make a decision on whether or not to approve the application and determine under what conditions the project should proceed, if approved.

Although the BLM has identified several applicable RMP goals and objectives that could potentially be advanced through the implementation of the proposed project, the applicants’ proposal also has the potential to cause or result in resource or land use plan conflicts. As such, the BLM intends to use the EIS process to determine whether the potential project conflicts and benefits can be reconciled (see Section 1.6 for additional discussion on plan conformance and potential conflicts).

The BLM has an obligation to protect the outstanding remarkable values of the Arkansas Canyonlands ACEC. The ACEC’s management guidelines are as follows:

Sensitive resources would be managed to protect, enhance, and interpret the significant scenic, historic, and archaeological values, the threatened and endangered peregrine falcon, key raptor habitat area, bighorn sheep habitat, and important fisheries. Additional public access along a nationally significant recreational river would be considered. The area would receive special management as an ACEC. (Draft Royal Gorge RMP [BLM 1993], Table 3-23, p. 3-46 and Appendix K).

Coupled with new issues and concerns and increasing demands on certain resources in the Project Area, various approvals and/or permits would be required from other agencies or jurisdictions to implement one or more of the components of the proposed project (see Section 1.7.1). Issuance of a land use authorization is a federal action that requires NEPA documentation, which in this case is an EIS. The EIS is prepared in compliance with NEPA, the CEQ Regulations for Implementing the Procedural Provisions of NEPA (40 CFR 1500-1508), and BLM implementing regulations and guidance.

Considerations for decisions to be made through the BLM’s EIS process include:

- Whether to authorize and under what terms and conditions to authorize the Artists’ request for use of public lands.

- If impacts of the proposed project are determined to result in unacceptable impacts, the Artists' Proposed Action may not be authorized in its entirety and a different combination of project elements may be authorized.
- Whether some or all mitigation measures identified in the EIS may be adopted or additional measures may be required.
- Whether the project and its potential effects are in conformance with the RMP, including the Arkansas Canyonlands ACEC.
- Whether an amendment to the Royal Gorge Resource Area RMP is necessary to allow for the use of public lands for the Proposed Action.

1.5.2 Purpose

The "purpose" can be described as a goal or objective that the BLM is trying to achieve. Often, the "purpose" can be presented as the solution to the problem described in the "need" for the action (NEPA Manual H-1790-1, p.35, 2nd paragraph).

The BLM's purpose is to ensure that the provisions and objectives established for the management of resources within the RGFO, including the ACEC, are maintained; to ensure that the public uses described herein will not cause unacceptable damage to public lands or ACEC values; and to assure that public health and safety concerns are addressed.

Additionally, the BLM's purpose for pursuing this action includes advancing the objective of providing a broad range of recreational opportunities on the lands under their administration. Specifically, the Approved RMP states that various actions will occur to enhance recreation, emphasizing a balance between resource protection and tourism (BLM 1996).

1.6 BLM LAND USE PLAN CONFORMANCE

The Project Area is situated within BLM-administered public lands guided by the May 1996 *Royal Gorge Resource Area Record of Decision and Approved Resource Management Plan* (BLM 1996).

1.6.1 Review of the Approved Land Use Plan

All actions approved or authorized by the BLM must conform to the existing land use plan where one exists (43 CFR 1610.5-3, 43 CFR 2920.2-5). The BLM's planning regulations state that the term "conformity" or "conformance" means that "... a resource management action shall be specifically provided for in the plan, or if not specifically mentioned, shall be clearly consistent with the terms, conditions, and decisions of the approved plan or amendment" (43 CFR 1601.0-5(b)). According to the BLM NEPA Handbook (H-1790-1, Section 1.5), if the Proposed Action does not conform to the existing land use plan, the proposal should either be modified to conform or a land use plan amendment to allow the action should be considered. Additionally, if the existing land use plan is silent about an activity, the plan direction, including the broad and programmatic goals and objectives, should be reviewed.

In this case, the 1996 RMP is silent on specific guidelines or management objectives pertinent to the proposed project. As such, the 1996 approved RMP / Record of Decision (ROD) were reviewed to identify overarching or programmatic guidance, objectives, and/or decisions as they pertain to the applicants' proposal.

In general, with the inclusion of appropriate constraints, stipulations, and mitigation measures, the applicants' proposal appears to be broadly consistent with the overall RMP objective of providing "variety of levels, methods, and mix of multiple use resource management [and] utilization," and support to the local and regional economy, as noted in the RMP excerpt below (BLM 1996):

The overall objective of this resource management plan is to provide a variety of levels, methods, and mix of multiple use resource management, utilization, and protection... BLM lands and resources will continue to be managed to provide for needed commodities and uses to assist in the support of local and regional economies... Generally, management practices and prescriptions will favor maintaining or enhancing the natural setting (e.g., wildlife habitat, visual resources, recreation areas, etc.)... Necessary constraints, stipulations, and mitigating measures will be included to protect these resources from irreversible damage (BLM 1996).

1.6.2 Specific Conformance Review Findings

A final determination of land use plan conformance rests on how consistent the action is or is not with the specific resource management objectives and decisions within the RMP. These are discussed below.

The 1996 RMP sub-divided the RGFO into ten Eco-Subregions (ESR) to enable site and/or issue-specific management and planning decisions. While the project could affect other subregions, the Project Area falls entirely under the guidance of the Arkansas River Subregion ESR #1 decisions, which were reviewed to further identify specific guidance, objectives, and/or decisions as they pertain to the applicants' proposal. None of the RMP decisions, including the 89 ESR-specific decisions, explicitly allow or prohibit the applicants' proposal. The proposed project can be interpreted to be in support of the following ESR-specific decisions, including:

- **Recreation Management 1-82** – Recreation will be managed to provide for a variety of recreational opportunities and settings; additional opportunities for mountain biking, hiking, off-highway vehicle use, interpretation, and horseback riding; facility development will be accomplished to reduce user conflicts and to improve visitor health and safety.
- **Recreation Management 1-86** – Various actions will occur to enhance recreation: river corridor and upland recreational opportunities emphasizing a balance between resource protection and tourism.
- **National Recreation Area 1-87** – River corridor recreation values will be managed as guided in any Congressional act to establish a NRA.

However, the proposed project is potentially in conflict with the following ESR-specific decisions:

- **Wildlife Habitat 1-16** – Conflicts between wildlife habitat and other uses, e.g., grazing, mineral development, etc., will be resolved in favor of achieving vegetation management goals.
- **Fishery Habitat 1-24** – Conflicts between fishery habitat and other values, e.g., livestock grazing, mineral development, etc., will be resolved in favor of fishery habitat.
- **Special Status Plants / Plant Communities Habitat 1-27** – Special status plants and plant communities' habitat will be protected through elimination of conflicting uses.
- **Special Status Animal Species Habitat 1-30** – Special status animal species habitat will be protected through elimination of conflicting uses.

- **Areas of Critical Environmental Concern (ACEC) 1-66** – All or portions of Browns Canyon, Mosquito Pass, Grape Creek, and Arkansas Canyonlands are designated as ACECs and will be managed to protect and enhance their special (ACEC) values. These designated ACECs will receive special management as follows:
 - livestock grazing will be excluded in some areas and adjusted in other areas;
 - timber harvesting and wood gathering will be allowed only for enhancement of protected values;
 - fluid minerals leasing will occur on portions of Mosquito Pass and Arkansas Canyonlands with a no surface occupancy stipulation;
 - locatable mineral entry will not occur;
 - mineral materials development will not occur;
 - VRM class II avoided for major rights-of-way;
 - retention in public ownership;
 - off-highway vehicle (OHV) use limited to designated roads and trails;
 - OHV use closed within the WSA portions of these ACECs.

In July 2008, in order to move forward with the NORA, the BLM RGFO committed to general land use plan (LUP) conformance on the basis indicated above; however, the BLM has reserved final judgment on the conformance decision pending completion of this EIS to better determine whether the applicants' proposal is in complete conformance with the plan and/or specific decisions and whether, how, and under what conditions a land use permit could be issued (Masinton 2009).

While the BLM has determined general conformance with the RMP, the EIS must summarize the findings of the impact analysis and provide the BLM and Cooperating Agencies a strong basis upon which a more definitive determination of conformance or non-conformance can be made (Masinton 2009). A final conformance determination is contingent on further analysis of project effects, to be presented in this EIS, and a more specific determination that the project complies with the objectives and/or decisions contained in the 1996 RMP.

1.7 RELATIONSHIP TO NON-BLM POLICIES, PLANS, AND PROGRAMS

In addition to consideration of management direction on BLM-administered lands, *Over The River™* is also subject to the management requirements, guidance, and constraints of other federal, state, and local jurisdictions and associated permitting. The BLM is required to protect the present and future uses of the public lands through land use planning and environmental assessment processes coordinated with other affected federal and state agencies and local governing bodies. An overview of relevant information from approved or adopted resource-related plans, policies, programs, and/or activities applicable to the project and Project Area is provided in the following sections.

The 2001 CMA for the AHRA is intended to ensure balanced, equitable, and efficient management of the Arkansas River, and to ensure that the public has the same access to any planning processes as they would if the lands remained under exclusive administration of any of the entities mentioned above. Additionally, the AHRA is managed according to the 2001 *Arkansas River Recreation Management Plan*. The vision statement for the plan states:

The Arkansas Headwaters Recreation Area shall be managed to emphasize its natural resources, resource sustainability and the standards for public land health, recognizing and respecting private property, while embracing numerous recreational, educational and commercial

activities. Such management will require balancing the many uses that preserve the existing natural settings and conditions as well as recognizing existing agriculture, rural and urban conditions throughout the river corridor. Maintaining these expectations and settings for visitors and residents alike will require individualized management through different sections of the river, in recognition of varying natural and manmade influences. Where conflict over goals and objectives occurs, balance and compromise should be found that recognizes the value of authorized recreational activities without diminishing the standards for public land health or the water resources (AHRA 2001a).

1.7.1 Other Permits, Approvals, and Entitlements

Various approvals and/or permits would be required from other agencies or jurisdictions to implement one or more of the components of the proposed project. The permits, approvals, and entitlements for these agencies and jurisdictions are summarized in Table 1-1; a detailed discussion of key permits and approvals is provided in Appendix A, Permits and Approvals Summary.

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Table 1-1. Summary of Necessary Permits and Approvals

Agency	Permit or Consultation/Authority	Regulatory Action	Expected review time	Comments/Issues
FEDERAL				
Bureau of Land Management (BLM)	Environmental Impact Statement (EIS) / National Environmental Policy Act of 1969 (NEPA) and Council on Environmental Quality (CEQ) Regulations for Implementing NEPA (40 CFR 1500-1508)	Major federal action affecting the environment, typically triggered by work on federal lands, issuance of a federal permit, or federal funding. Provides a mechanism for informed decision-making and public input.	Preparation of EIS is typically 12 to 36 months, depending on project complexity. Estimated timeframe for this project is approximately 24 months.	EIS process provides the foundation for BLM's land use permit and streamlines other agency approvals, including USFWS and SHPO consultation. The Record of Decision (ROD) provides the final decision for the approved actions.
	Land Use Permit / Section 302 of FLPMA provides the BLM's authority to issue leases and permits (43 CFR 2920)	Consists of a 302 permit application, Notice of Realty Action (NORA), EIS, and appraisal.	Upon completion of the NEPA process, review takes 6 to 9 months once the appraisal request is received.	Appraisal Services Directorate would conduct an appraisal of the property to determine fair market value. Standard stipulations specified in 43 CFR 2920.7 and a surety bond from a federally approved source would be applied.
U.S. Fish and Wildlife Service (USFWS)	Review under Section 7 of the Endangered Species Act (ESA)	Biological Assessment (BA) and USFWS consultation conducted by the BLM as part of the NEPA process.	Review conducted concurrent with NEPA process.	Species surveys, BA, and USFWS consultation conducted concurrent with NEPA process. USFWS will issue a Biological Opinion (BO) that will be incorporated into the ROD.
U.S. Army Corps of Engineers (USACE)	Section 404 Clean Water Act permit	Permit addresses impacts to any wetlands or waterbodies below the ordinary high water mark. May be considered for stream and wetland crossings.	Review conducted after the NEPA process is complete, prior to initiation of the project.	It is not anticipated that a 404 permit would be required. Recommended providing a summary of the project and overview maps before the project initiation for review of potential impacts.
U.S. Environmental Protection Agency (EPA)	Authority for Clean Water Act and Clean Air Act delegated to the State of Colorado.	See Colorado Department of Health and Environment (CDPHE).	See CDPHE.	See CDPHE.

Agency	Permit or Consultation/Authority	Regulatory Action	Expected review time	Comments/Issues
STATE OF COLORADO				
Colorado State Historic Preservation Officer (SHPO)	Review under Section 106 of the National Historic Preservation Act (NHPA)	SHPO consultation conducted by the BLM as part of the NEPA process.	Review conducted concurrent with NEPA process.	Area of potential effects (APE), class III cultural resource surveys, effect and eligibility evaluations, and SHPO consultation conducted concurrent with NEPA process. SHPO recommendations and concurrence incorporated into the ROD.
Colorado State Parks (State Parks) – Arkansas Headwaters Recreation Area (AHRA)	State Parks Special Activity Agreement <i>(current permit vehicle subject to further review and discussion)</i>	Details State Parks terms and conditions, approvals, and fees associated with the event. Subject to review by the State Parks Board.	Review conducted subsequent to the NEPA process. Approximately 90 days required for review and approval by the State Parks Board.	There are three possible options for permits. State Parks has indicated that the Special Activity Agreement permit is the permit vehicle currently being considered.
Colorado State Land Board (SLB)	Planning Lease and Construction Lease	Details SLB terms and conditions, approvals, bonds, and fees associated with lease to SLB lands. Subject to review by the Board of Land Commissioners.	Review conducted subsequent to the NEPA process. Timeframes dependent on when pre-read material provided to the board and placed on the board agenda. Approximately 3 months, but may be longer if controversial.	OTR Corp has filed an application to use a section of SLB Land. This application is being held until the completion of the EIS and request for re-initiation of review by OTR Corp.
Colorado Department of Transportation (CDOT) Regions 2 and 5	Special Use Permit for any work which requires lane closure or other use of US 50	Permit establishes terms and conditions to ensure the use of the ROW does not create traffic conflicts, hinder traffic flows, create public and vehicular safety issues, or hinder future use of the ROW for highway improvements.	Review conducted subsequent to the NEPA process. Approximately 2 weeks is needed for permit review.	Special use permit required to work, and/or park vehicles/equipment within CDOT's right-of-way. A Right of Way utility permit and construction access permit may also be required. An Incident Management Plan and Traffic Management Plan may also be required as part of the Permit.
Colorado State Patrol (CSP)	Special Event Permit	Permit establishes terms and conditions, CSP labor and project costs, and insurance.	Review conducted subsequent to the NEPA process. 90 days is required for review of the permit.	A Traffic Management Plan may also be required as part of this permit.

Agency	Permit or Consultation/Authority	Regulatory Action	Expected review time	Comments/Issues
Colorado Department of Public Health & Environment (CDPHE)	Construction Permit for air emissions under the Clean Air Act	Permit for air emissions that exceed air pollutant thresholds.	Review conducted concurrent with the NEPA process.	It is not anticipated that an air emissions permit would be required for the proposed activities.
	Stormwater Permit under Section 401 of the Clean Water Act, Water Quality Certification	Permit for soil disturbance greater than one acre.	Review conducted subsequent to the NEPA process. Review time is approximately 1 week to 10 days.	A Storm Water Management Plan should accompany the permit when submitted.
Colorado Division of Wildlife (CDOW)	Wildlife Permit for intentional harm or take out-of-season	Permit for take of wildlife.	n/a	It is not anticipated that the wildlife permit would be required for the proposed activities. There are no CDOW permits for the inadvertent take of any wildlife.
LOCAL				
Fremont County	Temporary Use Permit or Special Land Use Permit	Project evaluated for conformance with the County comprehensive plan and zoning regulations. Subject to review by the County Board of Commissioners.	Review conducted subsequent to the NEPA process. Review time is typically one month.	A drinking water plan, sanitation plan, concession plan, emergency operation plan, fire protection plan, event parking plan, and proof of liability insurance, and cash, surety or other bond would be required. Other permits that may be required include: flood damage prevention permit, street cut permit, individual sewage disposal, and driveway access permit.
	Building permit	Permit for permanent structures and compliance with building codes.	Review conducted subsequent to the NEPA process. Review time is up to a month.	No hard copy permits available. Permit would be issued as part of the construction phase.
	Crossing Permits	Permit for any altering of county roads.	Review conducted subsequent to the NEPA process. Review time is dependent on office backlog.	Only needed if crossing county roads.

Agency	Permit or Consultation/Authority	Regulatory Action	Expected review time	Comments/Issues
Chaffee County	Special Land Use Permit	Project evaluated for conformance with the county comprehensive plan and zoning regulations. Subject to review by the County Board of Commissioners.	Review conducted subsequent to the NEPA process. Review time is typically 2 months, but may take 4 months as a result of public comments.	Other requirements include a weed mitigation plan and security deposit and mutual aid agreements between the public safety agencies of the County, the City of Salida, and fire protection districts.
	Building and Electrical Permits	Permit for permanent structures and compliance with building codes.	Review conducted subsequent to the NEPA process. Review time is up to a month.	Not needed unless a permanent structure is constructed. Structure would be subject to inspection.
	Temporary Construction Permit	Permit for temporary structures and compliance with building codes.	Review conducted subsequent to the NEPA process. Review time is up to a month.	Not needed unless a temporary structure is constructed. Structure would be subject to inspection.
	Road Construction and/or Road Cut Permits	Permit for any altering of county roads.	Review conducted subsequent to the NEPA process. Review time is one week.	Not required, unless county roads will be altered.
	Crossing Permits	Permit for crossing county roads.	Review conducted subsequent to the NEPA process. Review time is one week or less depending on type and size of the road crossing.	Only needed if crossing county roads.
OTHER				
Union Pacific Railroad	Right of Access Contract	Permit for accessing the UPRR right-of-way.	Contract executed subsequent to the NEPA process, prior to construction.	It is not anticipated that there would be any terms or requirements that would change the design or implementation of the OTR project from its current form.

1.8 MAJOR APPLICABLE LAWS AND REGULATIONS

The following laws and regulations (in chronological order) are pertinent to the proposed project and management of federal lands in the Project Area. For the protection of BLM lands and resources, the project alternatives, design features, and mitigation measures will be developed in conformance with the following legislation:

- Antiquities Act of 1906 (P.L. 59-209; 34 Stat. 225; 16 U.S.C. 432, 433)
- Migratory Bird Treaty Act (MBTA) of 1918 (16 U.S.C. 703-712; Ch. 128; July 13, 1918; 40 Stat. 755), as amended.
- Recreation and Public Purposes Act of 1926 (43 U.S.C. 869 et seq.), as amended in 1954.
- Historic Sites Act of 1935 (P.L. 74-292; 49 Stat. 666; 16 U.S.C. 461)
- Archeological and Historic Preservation Act of 1960 (P.L. 86-523, 16 U.S.C. 469-469c-2), as amended.
- National Historic Preservation Act (NHPA) of 1966 (P.L. 89-665; 16 U.S.C. 470 et seq.).
- National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 et seq.).
- Clean Air Act (CAA) of 1970 (42 U.S.C. 7401 et seq.), as amended.
- Executive Order 11593 ("Protection and Enhancement of the Cultural Environment," 36 F.R. 8921, May 13, 1971)
- Federal Water Pollution Control Act (Clean Water Act) (CWA) of 1972 (33 U.S.C. §1251 et seq.), as amended.
- Endangered Species Act (ESA) of 1973 (16 U.S.C. 1531-1544, 87 Stat. 884), as amended.
- The Bald and Golden Eagle Protection Act (16 U.S.C. 668-668c), as amended.
- The Federal Noxious Weed Act of 1974, as amended (7 U.S.C. 2814)
- FLPMA of 1976, as amended (43 U.S.C. 1701 et seq.)
- Safe Drinking Water Act Amendments of 1977 (42 U.S.C. 201)
- Executive Order 11990, Protection of Wetlands, May 24, 1977.
- Archaeological Resources Protection Act of 1979 (P.L. 96-95; 16 U.S.C. 470aa-mm), as amended.
- Executive Order 12875, Enhancing the Intergovernmental Partnership, October 26, 1983.
- Native American Graves Protection and Repatriation Act of 1990 (25 U.S.C. 3001).
- Executive Order 12898, Environmental Justice, February 11, 1994.
- Executive Order 13084, Consultation and Coordination with Indian Tribal Governments, May 14, 1998.
- Noxious Weed Control Act of 2004 (P.L. 108-412)
- Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) (P.L. 96-51026; 26 U.S.C. 4611-4682)
- Resource Conservation and Recovery Act (RCRA) (P.L. 96-510; 42 U.S.C. 9601)
- Superfund Amendments and Reauthorization Act (SARA) (42 U.S.C. 9601-9675)
- Oil Pollution Act of 1990 (33 U.S.C. 2701 et seq.)
- Emergency Planning and Community Right-to-Know Act (EPCRA) (42 U.S.C. 11001 et seq)

1.9 PUBLIC INVOLVEMENT SUMMARY

Over The River™ was informally proposed by the Artists, Christo and Jeanne-Claude, in 1996 for the Arkansas River between Cañon City and Salida, Colorado. Based on OTR's verbal proposal, BLM started conducting an EA and held public meetings between 1997 and 2000. An informal scoping period was initiated by the BLM, with eight public meetings held in communities within the proposed Project Area from April 1997-October 2000. Christo and Jeanne-Claude made no further contact with the BLM in regards to the project proposal until August 2005. Scoping meeting dates and locations were as follows:

- April 18, 1997 – Salida
- April 20, 1997 – Cañon City
- December 2, 1997 – Salida
- December 3, 1997 – Cañon City
- December 4, 1997 – Cotopaxi
- October 24, 2000 – Cañon City
- October 25, 2000 – Cotopaxi
- October 26, 2000 – Salida

OTR re-approached the BLM about the proposed project in August 2005. Additional EA based scoping occurred January-February 2006. The BLM also hosted interagency meetings with CDOT, CDNR, Fremont County, Chaffee County, and CSP on May 24, 2006 to discuss and understand the public comments and questions. The official NEPA scoping period for this project began in January 2006 following the published NOI in the *Federal Register*, when the BLM hosted three additional public meetings:

- January 17, 2006 – Cañon City
- January 18, 2006 – Cotopaxi
- January 19, 2006 – Salida

The scoping comments led to an NOI published in the *Federal Register* on June 19, 2006, announcing the intent to prepare an EIS based on several factors, including a specific request from the applicants; the increasing complexity of the project; the level of controversy related to the project; and the level of involvement during scoping process. The NOI was also advertised in local newspapers. A Memorandum of Understanding (MOU) between OTR and BLM was developed and signed for preparation of an EIS in May 2007. In 2007, OTR delivered a Design and Planning Report that included EIS-level alternatives. In April 2008, BLM received additional information with the required level of detail to move forward with the EIS. This led to the process of filing, upper-level agency review of, and publication of a NORA in the *Federal Register* (pub. October 31, 2008).

The BLM created a database of public comments. The agency divided comments contained in the 1,351 letters into categories representing critical project issues. Because letters included more than one area of discussion, 3,934 individual comments were categorized. Many comments reasonably fit into more than one category; for example, an emergency response concern could also be a concern about traffic congestion, or an engineering concern may also be a concern about wildlife. Over 30 cooperating and consulting agencies have also participated in discussions about the project. BLM compiled public

comments, reviewed public comment substance, compiled a public comments database, and published a scoping report available at http://www.blm.gov/co/st/en/fo/rgfo/planning/OTR_documents.html.

All relevant issues raised by the public and other agencies during the EIS scoping process are considered in alternatives development. The issues identified by the BLM for further analysis are presented in Section 1.10.

1.10 ISSUES IDENTIFIED

This section briefly describes the issues identified for further analysis in this EIS, as well as the issues identified but dismissed from further analysis. The following discussion incorporates issues raised during public scoping, as well as internal BLM and Cooperating Agency scoping.

1.10.1 Issues Identified for Further Analysis

The following issues have been identified for further analysis in this EIS. In many cases, these issues were considered in the development of project alternatives (described in Chapter 2.0). In all cases, these issues will be further described and analyzed in Chapters 3.0, 4.0, and 5.0. The issues presented in Table 1-2 are not intended as a comprehensive list of all issues to be evaluated in the EIS; these issues simply represent the key concerns of the public, project team staff, and cooperators.

Table 1-2. Summary of Issues Identified for Further Analysis

Resource	Installation and Removal Phases	Exhibition Window
Emergency Response	<ul style="list-style-type: none"> • Response to industrial accidents • Response to hazardous material spills • Response to recreational accidents (rafting, ATV use, hiking, fishing, and climbing) • Search and rescue incidents • Motor vehicle and aircraft accidents • Wildfire and stormwater events • Crime incidents • Accessibility for canyon resident health issues • Response times • Adequacy of resources to respond to incidents and existing capabilities of response teams • Accessibility to canyon and evacuation • Emergency coordination and communication issues • Weather and air travel constraints 	<ul style="list-style-type: none"> • Response to recreational accidents (rafting, ATV use, hiking, fishing, and climbing) • Search and rescue incidents • Motor vehicle and aircraft accidents • Wildfire and stormwater events • Crime incidents • Accessibility for canyon resident health issues • Response times • Accessibility to canyon and evacuation • Adequacy of resources to respond to incidents and existing capabilities of response teams • Emergency coordination and communication issues • Weather and air travel constraints
Engineering	<ul style="list-style-type: none"> • Glues and bonding chemicals used during installation • Anchor hole patching during removal 	<ul style="list-style-type: none"> • Artwork's durability for wind and hail • Geological hazard (fault impacts) • Adequacy of engineering assumptions

Resource	Installation and Removal Phases	Exhibition Window
Natural and Cultural Resources (including soils, geology, noxious weeds, and wildland fire)	<ul style="list-style-type: none"> • Potential for erosion and river sedimentation • Potential for noxious weed infestation • Potential for rock instability • Assurance of adequate restoration • Stress on natural resources beyond typical current conditions in canyon • Potential damage to cultural resources 	<ul style="list-style-type: none"> • Shading effects on river ecology • Geological hazard from cable vibrations • Potential for erosion and river sedimentation • Potential for noxious weed infestation • Fire danger • Stress on natural resources beyond typical current conditions in canyon • Potential damage to cultural resources
Pollution and Sanitation	<ul style="list-style-type: none"> • Potential for river contamination and water quality • Site aesthetics • Noise and dust resulting from drilling • Potential for river contamination and water quality • Hazardous materials spills • Capacity of area for sanitation, toilet facilities, and trash removal/recycling 	<ul style="list-style-type: none"> • Debris if artwork collapsed • Potential for river contamination and water quality • Hazardous materials spills • Capacity of area for sanitation, toilet facilities, and trash removal/recycling
Public Safety	<ul style="list-style-type: none"> • Insurance and liability issues • Accident potential during construction/removal • Public safety risks and dangers in relation to activity 	<ul style="list-style-type: none"> • Harm if artwork collapsed • Insurance and liability issues • General public safety • Potential for threat of terrorism • Considerations of public safety from operation planning
Recreation	<ul style="list-style-type: none"> • Economic impacts to recreation industries (fishing, rafting/kayaking) • Duration of installation and removal impacts on river and river access for recreation • Effects on natural canyon/river experience and natural beauty • Impacts on nearby area's bicycle and hiking trails and off-road use 	<ul style="list-style-type: none"> • Cable and fabric panel impacts on recreation, including fishing activities and rafting • Effects on natural canyon/river experience and natural beauty • River safety and conflicts with fabric panels • Exceeding visitor carrying capacity during the busy summer season • Impacts on area's nearby bicycle and hiking trails and off-road use • Recreational experience of viewing artwork • Attraction of new types of visitors to area • Railroad access and use potential
Socioeconomics	<ul style="list-style-type: none"> • Costs to area, including disruption of life, work, and recreation in canyon • Commercial traffic impacts • Potential for increased crime • Boost for local economy (visitor expenditures) 	<ul style="list-style-type: none"> • Exceeding visitor carrying capacity during the busy summer season • Commercial traffic impacts • Potential for increased crime • Effect on local economy (visitor expenditures) • Long-term social effect from work-of-art • Costs paid by Artists • Costs to area, including disruption of life, work, and recreation in canyon

Resource	Installation and Removal Phases	Exhibition Window
Transportation	<ul style="list-style-type: none"> • Narrow US 50 cross-section • Delays - increased travel times • Duration and lane closures • Local traffic congestion and access 	<ul style="list-style-type: none"> • Delays - increased travel times • Local traffic congestion and access • Temporary air pollution • Potential for increased crashes • Narrow US 50 cross-section and narrow canyon constraints • Lack of alternate routes • Traffic Management Plan • Drivers' unfamiliarity with environment • Alternate display locations and times • Decreased speed to possibly reduce accidents
Wildlife	<ul style="list-style-type: none"> • Noise and vibration impacts • Physical disturbance • Wildlife accustomed to human presence, cars, boats, and previously to trains • Habitat and water access limitations • Increased vehicular traffic 	<ul style="list-style-type: none"> • Potential cable and fabric hazards to wildlife • Increased vehicular traffic • Stress induced by visitor population • Shading effects of fabric panels on wildlife and river ecology • Habitat and water access limitations • Harm if artwork collapsed

1.10.2 Issues Eliminated from Further Analysis

Wild horses and burros – In accordance with the Wild Free-Roaming Horses and Burros Act of 1971, the BLM protects and manages wild horses and burros on public rangelands in 10 Western states, including Colorado. The BLM controls four Herd Management Areas (HMAs) in Colorado: the Sand Wash, Spring Creek Basin, Piceance-East Douglas, and Little Book Cliffs HMA. All four Colorado HMAs are located in the far western part of the state, outside the Project Area and the Royal Gorge Resource Area. Wild horses and burros are not expected to be affected by any of the proposed project activities, and are therefore dismissed from further analysis in this EIS.

Farmlands (Prime or Unique) – No prime or unique farmlands, as categorized by the Natural Resource Conservation Service (NRCS 1995), exist within the Project Area because of the short growing season and unsuitable soils. The nearest area of prime farmlands is east of Cañon City. The majority of the Arkansas River corridor is made up of forest and wooded land. Privately owned irrigated cropland occurs near Howard, Cotopaxi, Texas Creek, and Parkdale, primarily on the south side of US 50. The 1996 RGFO RMP did not specifically address prime or unique farmlands. Prime and unique farmlands are not expected to be affected by any of the proposed project activities and are therefore dismissed from further analysis in this EIS.